

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 469**

Citations Affected: IC 34-6-2; IC 34-31-8.

Synopsis: Limited liability for certain asbestos claims. Conference committee report for ESB 469. Limits civil liability arising from asbestos claims for certain corporations. **(This conference committee report removes provisions concerning when certain causes of action regarding an asbestos claim may be filed.)**

Effective: July 1, 2009.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 469 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 34-6-2-11.5 IS ADDED TO THE INDIANA CODE
- 3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2009]: **Sec. 11.5. "Asbestos claim", for purposes of IC 34-31-8,**
- 5 **has the meaning set forth in IC 34-31-8-1.**
- 6 SECTION 2. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE
- 7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 8 1, 2009]: **Sec. 29.5. "Corporation", for purposes of IC 34-31-8, has**
- 9 **the meaning set forth in IC 34-31-8-2.**
- 10 SECTION 3. IC 34-6-2-69.5 IS ADDED TO THE INDIANA CODE
- 11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 12 1, 2009]: **Sec. 69.5. "Innocent successor corporation", for purposes**
- 13 **of IC 34-31-8, has the meaning set forth in IC 34-31-8-3.**
- 14 SECTION 4. IC 34-6-2-142.5 IS ADDED TO THE INDIANA
- 15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 16 [EFFECTIVE JULY 1, 2009]: **Sec. 142.5. "Successor asbestos related**
- 17 **liability", for purposes of IC 34-31-8, has the meaning set forth in**
- 18 **IC 34-31-8-4.**
- 19 SECTION 5. IC 34-6-2-143.8 IS ADDED TO THE INDIANA
- 20 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 21 [EFFECTIVE JULY 1, 2009]: **Sec. 143.8. "Transferor corporation",**
- 22 **for purposes of IC 34-31-8, has the meaning set forth in**

IC 34-31-8-5.

SECTION 6. IC 34-31-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 8. Limited Liability Concerning Asbestos Related Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief concerning asbestos, including:

(1) a claim relating to the health effects of exposure to asbestos, including:

(A) personal injury;

(B) death;

(C) mental injury;

(D) emotional injury;

(E) risk of disease or other injury; or

(F) the costs of medical monitoring or surveillance;

(2) a claim made by or on behalf of any person exposed to asbestos, including a claim of a:

(A) representative;

(B) spouse;

(C) parent;

(D) child; or

(E) other relative;

of a person exposed to asbestos; and

(3) a claim for damage or loss caused by the:

(A) installation;

(B) presence; or

(C) removal of asbestos.

Sec. 2. As used in this chapter, "corporation" means a corporation for profit, including a domestic corporation organized under Indiana law or a foreign corporation organized under the law of a jurisdiction other than Indiana.

Sec. 3. (a) As used in this chapter, "innocent successor corporation" means a corporation that:

(1) assumes;

(2) incurs;

(3) has assumed; or

(4) has incurred;

successor asbestos related liability and became a successor corporation due to a merger or consolidation with another corporation before January 1, 1972.

(b) The term includes a corporation into which an innocent successor corporation is at any time subsequently merged or consolidated.

(c) The term does not include a corporation that, after a merger, a consolidation, or the exercise of control or the ownership of stock of the corporation before the merger or consolidation, continues in the business of:

(1) mining asbestos;

(2) selling or distributing asbestos fibers; or

(3) manufacturing, distributing, removing, or installing asbestos containing products that are the same, or substantially the same, as those products previously manufactured, distributed, removed, or installed by the transferor corporation.

Sec. 4. As used in this chapter, "successor asbestos related liability" means any liability that is related to an asbestos claim that was assumed or incurred by a corporation as a result of:

- (1) a merger or consolidation with another corporation;
- (2) the plan of merger or consolidation related to the merger or consolidation; or
- (3) the exercise of control or the ownership of stock of the corporation before the merger or consolidation.

Sec. 5. As used in this chapter, "transferor corporation" means a corporation from which a successor asbestos related liability was assumed or incurred.

Sec. 6. This chapter shall be construed liberally regarding innocent successor corporations.

Sec. 7. This chapter applies to a civil action asserting an asbestos claim that is filed against an innocent successor corporation:

- (1) after June 30, 2009; or
- (2) before July 1, 2009, if trial has not commenced as of July 1, 2009.

Sec. 8. (a) Subject to subsections (c) and (d) and sections 10 and 12 of this chapter, the cumulative successor asbestos related liabilities of an innocent successor corporation are limited to the fair market value of the total gross assets of the transferor corporation, determined as of the time of the merger or consolidation through which the innocent successor corporation assumed or incurred successor asbestos related liability.

(b) An innocent successor corporation is not responsible for successor asbestos related liability in excess of the limitation set forth in subsection (a).

(c) For purposes of this section, if a transferor corporation assumed or incurred successor asbestos related liability in connection with a merger or consolidation with a prior transferor corporation, the fair market value of the total gross assets of the prior transferor corporation determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) to determine the limitation of liability of the innocent successor corporation.

(d) Cumulative successor asbestos related liabilities include liabilities that exist after the merger or consolidation of the innocent successor corporation and the transferor corporation and that are paid or discharged by or on behalf of the:

- (1) innocent successor corporation; or
- (2) transferor corporation;

as part of a settlement or judgment in Indiana or another jurisdiction.

Sec. 9. The limitations set forth in section 8 of this chapter apply to the successor asbestos related liability of an innocent successor

corporation and do not apply to:

- (1) worker's compensation benefits paid by or on behalf of an employer to an employee under IC 22-3 or a comparable worker's compensation law in another jurisdiction;
- (2) a claim against a corporation that is not a successor asbestos related liability;
- (3) any obligation under the federal National Labor Relations Act (29 U.S.C. 151 et seq.); or
- (4) a collective bargaining agreement.

Sec. 10. An innocent successor corporation may establish the fair market value of the total gross assets, including intangible assets, of a transferor corporation to determine limitations under section 8 of this chapter by any reasonable method, including:

- (1) by reference to the going concern value of the assets;
- (2) by reference to the purchase price attributable to or paid for assets in an arms length transaction; or
- (3) in the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

Sec. 11. (a) If the total gross assets of a transferor corporation include liability insurance issued to the transferor corporation, this chapter does not affect the applicability, terms, conditions, or limits of the liability insurance.

(b) This chapter does not affect the rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including:

- (1) preenactment settlements resolving coverage related disputes; or
- (2) contracts regarding the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, self-insured periods, or periods as to which insurance is uncollectible or unavailable.

(c) A settlement of a dispute concerning liability insurance coverage entered into by a:

- (1) transferor corporation; or
- (2) successor corporation;

with the insurers of a transferor corporation before July 1, 2009, is determinative of the total coverage of liability insurance to be included in the calculation of a transferor corporation's total gross assets under this chapter.

Sec. 12. (a) Except as provided in subsections (b) through (d), the sum determined as the fair market value of the total gross assets of a transferor corporation as of the time of a merger or consolidation for purposes of determining the limit on the cumulative successor asbestos related liabilities of an innocent successor corporation under this chapter shall be adjusted annually at a rate equal to the sum of the following:

- (1) The prime rate listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation. If the prime rate is not published in the first edition of the Wall Street Journal, then a reasonable

1 determination of the prime rate on the first day of the year
2 may be used.

3 **(2) One percent (1%).**

4 **(b) The rate described in subsection (a) may not be**
5 **compounded.**

6 **(c) The adjustment of the fair market value of the total gross**
7 **assets of the transferor corporation as of the time of the merger or**
8 **consolidation shall continue as described in subsection (a) until the**
9 **date as of which the adjusted value is first exceeded by the**
10 **cumulative amounts of successor asbestos related liabilities paid or**
11 **committed to be paid by or on behalf of:**

12 **(1) the innocent successor corporation;**

13 **(2) any predecessor corporation; and**

14 **(3) the transferor corporation;**

15 **after the time of the merger or consolidation.**

16 **(d) No adjustment of the fair market value of total gross assets**
17 **of a transferor corporation under this section shall be applied to**
18 **any liability insurance.**

 (Reference is to SB 469 as reprinted March 27, 2009.)

Conference Committee Report
on
Engrossed Senate Bill 469

Signed by:

Senator Boots
Chairperson

Representative Grubb

Senator Tallian

Representative Brown T

Senate Conferees

House Conferees